

O I P E
EXPRESS MAIL CERTIFICATE OF MAILING (37 CFR 1.10)
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Docket No.
41482-25424

AUG 19 2004

Re Application Of:
Vandersall et al.
TRADEMARK

Serial No.
09/978,602

Filing Date
October 16, 2001

Examiner
Cephia D. Toomer

Group Art Unit
1714

Title:

FIRE RETARDANT COMPOSITIONS WITH REDUCED ALUMINUM CORROSIVITY

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS

Transmitted herewith is:

1. Request for Continued Examination (\$770.00);
2. Submission / Response;
3. Terminal Disclaimer to Obviate a Provisional Double Patenting Rejection Over a Pending Second Application (\$110.00);
4. Office Action dated December 23, 2003; and
5. Postcard.

in the above identified patent.

No additional fee is required.

A check in the amount of _____ is attached.

The Commissioner is hereby authorized to charge and credit Deposit Account No. 20-0823 as described below. A duplicate copy of this sheet is enclosed.

Charge the amount of \$880.00.

Credit any overpayment.

Charge any additional fee required.

Signature

Dated: August 19, 2004

Kenneth Solomon, Reg. No.#31427
Thompson Coburn LLP
One US Bank Plaza, Suite 3500
St. Louis, Missouri 63101-9928
314-552-6000
314-552-7000 FAX

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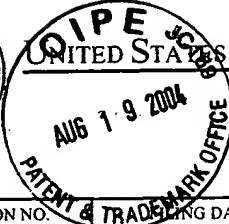
I certify that the document and fee is being deposited on August 19, 2004 with the U.S. Postal Service as Express Mail under 37 C.F.R. 1.10 and is addressed to Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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APPLICATION NO.	RECEIVING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/978,602	10/16/2001	Howard L. Vandersall	41482/25424	5279

21888 7590 12/23/2003

THOMPSON COBURN, LLP
ONE US BANK PLAZA
SUITE 3500
ST LOUIS, MO 63101

EXAMINER

TOOMER, CEPHIA D

ART UNIT

PAPER NUMBER

1714

DATE MAILED: 12/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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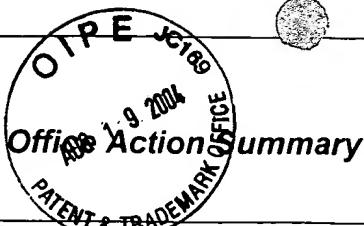
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Application No. 09/978,602 Examiner Cephia D. Toomer	Applicant(s) VANDERSALL ET AL. Art Unit 1714
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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 17 September 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-14, 16-33, 35-55, 57-72 and 74-79 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 23-33, 35-40, 63-72 and 74-79 is/are allowed.
- 6) Claim(s) 1, 3, 5, 6, 9, 13, 14, 16-18, 22, 41, 42, 44, 46, 47, 53-55, 57 and 62 is/are rejected.
- 7) Claim(s) 2, 4, 7, 8, 10-12, 19-21, 43-45, 48-52 and 58-61 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

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Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

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- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 - a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

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Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

This Office action is in response to the remarks filed on September 17, 2003.

The rejections of the claims under 35 USC 103(a) are withdrawn in view of Applicant's arguments.

1. Claims 1, 3, 5, 6, 9, 13, 14, 16-18, 22, 41, 42, 44, 46, 47, 53-55, 57 and 62 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-48 of copending Application No. 09/978,401 as stated in the prior office actions.

Applicant argues that the claims of '401 are broader than those of the present invention and therefore are not encompassed by the present invention. The examiner agrees. However, application '401 contains all of the components of the present invention and is also open to the corrosion inhibitors of the present invention, given that the transitional language of the claim is "comprising". This is shown to be true because several of the dependent claims of '401 recite that a corrosion inhibitor may be included in the composition. The prior art of record also shows that it is conventional to include a corrosion inhibitor in fire retardant compositions. Therefore, it would have been obvious to one of ordinary skill in the art to have included a corrosion inhibitor in the present fire retardant composition to reduce corrosion of the corrodible material used in fighting fires.

2. Claims 2, 4, 7, 8, 10-12, 19-21, 43-45, 48-52 and 58-61 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in

independent form including all of the limitations of the base claim and any intervening claims.

3. Claims 23-33, 35-40, 63-72 and 74-79 are allowable.

The prior art fails to teach or suggest the claimed corrosion inhibitors or their respective concentrates.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within ~~TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.~~

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cephia D. Toomer whose telephone number is 571-272-1126. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Cephia D. Toomer
Cephia D. Toomer
Primary Examiner
Art Unit 1714

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